

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 731 of 1997

in

SPECIAL CIVIL APPLICATION No 10451 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KASAMBHAI FATEHBHAI KHANCHI

Versus

CHANDUBHAI DAHYABHAI RAJPUT

Appearance:

MR GM JOSHI for Appellant
MR RS SANJANWALA for Respondent No. 1
MR RC KODEKAR for Respondent No. 2
NOTICE SERVED for Respondent No. 5, 6

CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE A.M.KAPADIA

Date of decision: 06/03/2000

ORAL JUDGEMENT (Per J.M. Panchal, J.):

1. This appeal which is filed under clause 15 of the Letters Patent is directed against judgment dated July 9, 1997, rendered by the learned Single Judge in Special Civil Application No. 10451 of 1996 by which it is held that the appellant is not entitled to hold the office of the President of Jambusar Nagarpalika as he was not elected from the reserved seat belonging to Backward Class and, therefore, was not entitled to contest for the office of the President of Jambusar Nagarpalika. By the impugned judgment, a writ of co-warranto was also issued removing the appellant from the office of the President of Jambusar Nagarpalika forthwith whereas the original respondents Nos.2 and 3 were directed to take appropriate steps for filling in the post of President of Jambusar Nagarpalika in accordance with law forthwith.

2. The appellant belongs to a Backward Class but had been elected to Jambusar Nagarpalika from an unreserved seat. The question raised in Special Civil Application No. 10451 of 1996 was whether he was entitled to contest in the election for the post of President of Nagarpalika which was reserved for a Backward Class candidate. The learned Single Judge held that the appellant was not entitled to hold office of the President of Jambusar Nagarpalika as he was not elected from reserved seat belonging to Backward Class. Therefore, by the impugned judgment, the learned Single Judge issued a writ of co-warranto removing the appellant from the office of the President of Jambusar Nagarpalika forthwith and directing the respondents Nos.2 and 3 to take appropriate steps for filling in the post of President of Jambusar Nagarpalika. The present appeal is directed against the said judgment.

3. During the pendency of the appeal, Civil Application No. 6379 of 1997 was filed by the appellant claiming interim relief. However, the Division Bench hearing the application declined to grant interim relief vide order dated August 4, 1997. That order was subjected to challenge in Civil Appeal No. 8279 of 1997 (arising out of Special Leave Petition (Civil) No. 17369 of 1997) before the Supreme Court. The Supreme Court by judgment dated November 25, 1997 passed the following operative order:

"For the aforesaid reasons the judgment of the High Court under challenge is set aside as the election of the appellant cannot on this ground

be held to be invalid. Consequently, the writ petition filed by the respondent shall stand dismissed. No order as to costs."

4. The above referred to decision of the Supreme Court makes it clear that the judgment which is impugned in the appeal is already set aside by the Supreme Court. Therefore, the appeal has become infructuous. The appeal having become infructuous we are of the opinion that the same deserves to be disposed of accordingly.

5. For the foregoing reasons, the appeal fails and is dismissed with no orders as to costs. The appeal stands disposed of as having become infructuous.

(J.M. Panchal, J.)

6.3.2000. (A.M. Kapadia, J.)

(karan)